Stoody Settlement
Response to Northrop's comments on fairness of allocation
07/23/04

The total interim remedy Site cost estimate at the time this settlement was executed was $66.7 million. EPA performed an internal allocation to help determine the appropriate settlement amount for PRPs settling with the United States. EPA's internal allocation estimated Stoody's share of liability at the Site to be approximately three tenths of one percent (0.31%). Three tenths of one percent (.31%) of the $66.7 million in Site costs is $206,770. The $413,540 settlement before this Court represents 100% of Settling Defendants allocated share of the Site costs, plus a 100% premium. The 100% "premium" in this $413,540 settlement provides coverage for contingencies, should the remedy costs run higher than estimated.[1/] Because the $413,540 share to be paid by the Stoody represents 100% of EPA's estimate of Stoody's share of liability, plus a 100% premium, the settlement is clearly fair and reasonable.

Northrop Grumman raises questions concerning EPA's allocation method. (Comments at X, ¶ .) EPA prepared its allocation model based on the amount of contamination each source property contributed to groundwater contamination at the Site. A total of sixty-two source properties were identified in EPA's allocation. After careful consideration of other options, given the circumstances at this Site, EPA determined that the fairest way to allocate responsibility among PRPs was to rely upon groundwater data from a "representative well" for each source property because this data provided the most consistent representative information regarding each source property's contaminant contribution to the Site groundwater plume. A "representative well" for each source property was selected based upon an evaluation of the groundwater data to determine which well at or near a source property most appropriately represented the maximum contamination attributable to that source property. Generally speaking, the most contaminated down gradient

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1. For example, EPA recently identified additional contaminants at the Site, such as perchlorate and 1,4-dioxane, which will require additional treatment and will increase the Site costs. Since, at the time the Stoody settlement was executed, the costs of any such additional treatment were speculative, these potential costs were not taken into account in estimating Stoody's share of liability. Notwithstanding the potential cost increase due to emerging chemicals, the agreed upon settlement amount is fair for the purposes of resolving the Proof of Claim filed with the Bankruptcy Court, because the agreed upon settlement figure includes a 100% premium, and was based upon the estimated Site costs at the time Settlement Agreement was executed.

well on each source property was chosen as the "representative well."[2/] However, if EPA determined that the most contaminated down gradient well at or near a source property was significantly impacted by contamination from other sources and that another well more accurately represented that source property, then EPA picked the well that best represented that source property as the "representative well."[3/] Likewise, if a down gradient well located off the source property had the highest contamination concentration clearly associated with a source property, EPA selected that well as the"representative well" instead of one on the property.

EPA averaged the available groundwater data from the "representative well" for each source property. Because "representative wells" had been installed and sampled at different times, some source properties had more data than others. Maximum contaminant levels (MCLs)[4/] are those levels which must be met as the cleanup standard for treatment under the interim remedy. Because chemicals requiring treatment have different MCLs, EPA "normalized" the well data so it could compare the average concentration for each contaminant chemical to its specific MCL, and adjust the concentration in the allocation for each chemical according to its relationship to its MCL. The allocable share for each source property was determined by dividing the "normalized" average contaminant concentration for each source property by the total contaminant concentration for all source properties.

EPA initially proposed an allocation method based only upon groundwater concentration data and sought input on this allocation method from the Puente Valley Steering Committee (of which Northrop Grumman was a leading member). The PVSC comments included a recommendation that the Agency should consider volume in its allocation. EPA considered the PVSC comments and determined that the volume component was an appropriate addition to its allocation, because the cost of cleanup at the Site is affected by both the concentration of contaminants

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2. A single well was chosen to represent each source property since some properties have only one down gradient well.

3. If a source property had only one "representative well"at or near the property, and that well well was impacted by other sources but EPA could find no other down gradient well representative of contamination from that source property, EPA had no choice but to rely upon that well data, which was the only well data available.

4. MCLs are the maximum contaminant levels established for drinking water under the Safe Drinking Water Act ("SDWA"), 42 U.S.C. §§ 300f et. seq.

and the volume of groundwater to be treated.

EPA used the "ATRANS" model, a groundwater contaminant transport model, to estimate the volume of groundwater impacted by each source property.[5/] EPA input each source property's "normalized" average contaminant concentration into the "ATRANS" model to determine the volume of groundwater contaminated by each source property.[6/] The percent contribution by volume for each source property was determined by dividing the volume of groundwater impacted by each source property by the total volume of groundwater impacted at the Site.

EPA determined that the most equitable way to allocate proportionate share responsibility at the Site was a 75/25 % weighting of concentration/volume. In other words, EPA's final allocatable share for each source property was achieved by weighting the contaminant concentration 75% and the volume of groundwater impacted by the contamination 25%. EPA relied primarily on contaminant concentration because this information was derived from actual field data, while the volume of groundwater impacted was modeled based on numerous assumptions. Because the volume of groundwater impacted per unit of contamination decreases as the contaminant concentration increases, the volume component increases the relative share for smaller contributors and decreases the relative share for larger contributors. Had EPA placed a greater emphasis on the volume component, it would have been unfair to smaller PRP contributors, requiring smaller PRP contributors to pay much more per unit of contamination than larger PRP contributors.

~~Because Stoody represents one source property,~~ EPA's allocation for Stoody was based on groundwater contamination data from the "representative well" on Stoody's property. EPA's allocation established that Stoody is responsible for 0.31% of the contamination at the Site. The Settlement Agreement is fair and reasonable because the $413,540 allocated to Stoody represents 100% of EPA's estimate of Stoody's liability, plus a 100% premium.

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5. "ATRANS" is a publically available analytical model used by hydrogeologists to evaluate groundwater contaminant transport.

6. Since the contaminant concentration was the only consistently available factor for each source property, uniform assumptions were made for each source property with regard to other variables. For example, EPA assumed a 20 year release and a 200 foot thick unconfined aquifer for each source property.